

AMENDED IN ASSEMBLY JULY 12, 2004

AMENDED IN SENATE MAY 20, 2004

AMENDED IN SENATE APRIL 22, 2004

AMENDED IN SENATE APRIL 16, 2004

SENATE BILL

No. 1618

Introduced by Senator Battin

(Principal coauthor: Assembly Member Nakanishi)

February 20, 2004

An act to amend Section 226 of the Labor Code, relating to employee compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1618, as amended, Battin. Employee compensation.

Existing law requires every employer to, at the time of each payment of wages, furnish each employee with an accurate itemized statement showing, among other things, the name of the employee and his or her social security number. Existing law exempts the state or a city, county, city and county, district, or other governmental entity from these provisions. Existing law provides that a knowing and intentional violation of this provision is a misdemeanor.

This bill would, instead, require an employer, *by January 1, 2008*, to furnish each employee with an accurate itemized statement showing no more than the last 4 digits of the employee's social security number or an existing employee identification number other than a social security number. The bill would additionally require the state, or any city, county, city and county, district, or any other governmental entity, if it furnishes its employees with a check, draft, or voucher paying the

employee's wages, to, *by January 1, 2008*, use no more than the last four digits of the employee's social security number or to use an existing employee identification number other than the social security number on that check, draft, or voucher. By requiring an employer to furnish each employee with an accurate itemized statement showing no more than the last 4 digits or less of the employee's social security number, or an existing employee identification number other than a social security number, the violation of which is a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 226 of the Labor Code is amended to
2 read:
3 226. (a) Every employer shall, semimonthly or at the time of
4 each payment of wages, furnish each of his or her employees,
5 either as a detachable part of the check, draft, or voucher paying
6 the employee's wages, or separately when wages are paid by
7 personal check or cash, an accurate itemized statement in writing
8 showing (1) gross wages earned, (2) total hours worked by the
9 employee, except for any employee whose compensation is solely
10 based on a salary and who is exempt from payment of overtime
11 under subdivision (a) of Section 515 or any applicable order of the
12 Industrial Welfare Commission, (3) the number of piece-rate units
13 earned and any applicable piece rate if the employee is paid on a
14 piece-rate basis, (4) all deductions, provided that all deductions
15 made on written orders of the employee may be aggregated and
16 shown as one item, (5) net wages earned, (6) the inclusive dates of
17 the period for which the employee is paid, (7) the name of the
18 employee and ~~no more than the last four digits of his or her social~~
19 security number, *except that by January 1, 2008, only the last four*
20 *digits of his or her social security number* or an existing employee

identification number other than a social security number *may be shown on the check*, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. The employer may take reasonable steps to assure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

(d) This section does not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in

1 a subsequent pay period, not exceeding an aggregate penalty of
2 four thousand dollars (\$4,000), and is entitled to an award of costs
3 and reasonable attorney's fees.

4 (f) A failure by an employer to permit a current or former
5 employee to inspect or copy records within the time set forth in
6 subdivision (c) entitles the current or former employee or the
7 Labor Commissioner to recover a ~~seven hundred fifty dollar~~
8 *seven hundred fifty dollar* (\$750) penalty from the employer.

9 (g) An employee may also bring an action for injunctive relief
10 to ensure compliance with this section, and is entitled to an award
11 of costs and reasonable attorney's fees.

12 (h) This section does not apply to the state, to any city, county,
13 city and county, district, or to any other governmental entity,
14 except that if the state or a city, county, city and county, district,
15 or other governmental entity furnishes its employees with a check,
16 draft, or voucher paying the employee's wages, the state or a city,
17 county, city and county, district, or other governmental entity
18 shall, *by January 1, 2008*, use no more than the last four digits of
19 the employee's social security number or shall use an existing
20 employee identification number other than the social security
21 number on that check, draft, or voucher.

22 SEC. 2. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.